IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6852 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KIRAN LAKHAMASI KHIMASIYA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6852 of 2002

MR HR PRAJAPATI for Petitioner No. 1

MR VM PANCHOLI, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 19/02/2003

ORAL JUDGEMENT

#. By filing this petition, the petitioner-detenu has challenged his detention order dated 26.6.2002. By the

impugned order, the petitioner-detenu is detained in exercise of the powers under section 3(1) of the Gujarat Prevention of Antisocial Activities Act,1985 (hereinafter referred to as "the PASA" for short), as, the detaining authority found that the detenu is a "property grabber" and is required to be detained under the preventive detention, so that, he may not continue with such type of illegal activities.

#. Along with the detention order, the detenu was also served with the grounds of detention. In the said grounds, six reasons are given, which are in connection with dealing with the land bearing Revenue Survey No.1354. The allegation against the petitioner is that the petitioner has purchased illegally certain pieces of land bearing Revenue Survey No.1354 on 11.1.1997, and thereafter, he tried to sell it illegally by cheating the people. It is found that in the year 1998 about 134 documents are executed, i.e. documents of sale. It is, therefore, found that the petitioner is a property grabber. The petitioner has challenged said detention order on various grounds.

#. It is submitted on behalf of the petitioner that even though the alleged incident has occurred on 11.1.1997, the detention order is passed after about five years, as, it is passed on 26.6.2002. It is submitted that, in view of this long delay, the order of detention is required to be quashed and set aside. For that purpose, learned advocate has relied upon the decision of this Court in the case of Elesh Nandubhai Patel Vs. Commissioner of Police, Ahmedabad City and others, reported in 1997 (1) GLH 381 wherein the Court in para 21 observed as under.:

> "In the instant case, the last registered case is of May 20, 1996. The petitioner detenu was granted anticipatory bail by the competent Court. He was also granted regular bail subsequently. The impugned order of detention has been passed on November 05, 1996, i.e. after a delay of 5 months and 15 days. It is of course true that the detaining authority has relied on two incidents of 2nd October and 10th October 1996, both unregistered cases. I have gone through the allegations. I fail to understand if the allegations are really of such a grievous nature, why the cases have not been registered against the petitioner. There appears to be some substance in the contention of the petitioner that these two unregistered cases have been referred only with a view to cover up the gap or

to give life to a stale case. This unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. If I am to buttress my findings, I would say the reference may be made to the decision of the Supreme Court in Anand Praksh v. State of U.P. reported in AIR 1990 SC 516 and Pradeep Nilkanth v. S.Ramamurthy reported in 1993 (2) Suppli, SCC 61."

#. So far as the aspect about the delay is concerned, the State has not even filed any reply and even the petition is not resisted by filing the affidavit-in-reply. In my view, the alleged incident is of 1997, and, therefore, the authority was required to pass appropriate order without waiting for five years. Even otherwise, the delay in passing the detention order is not explained by the authority and since this Court has also released co-detenu Shri Amrutlal Jerambhai Nanda, this petition is required to be allowed. If the authority was vigilant, it would have passed the detention order forthwith without waiting for about five years. In that view of the matter and in view of the judgment referred to above, the order of detention is required to be quashed and set aside.

#. In view of what is stated above, the petition is allowed. The order of detention dated 26.6.2002 is quashed and set aside. The detenu Kiran Lakhamasi Khimasiya is ordered to be set at liberty forthwith if he is not required in connection with any other case. Rule is made absolute accordingly. Direct service is permitted.

(P.B.Majmudar,J)
(pathan)